IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 36570 of 2007(C)

AGAINST THE ORDER IN EP.175/2005 IN
OS.232/2002 of SUB COURT, MAVELIKKARA

.....

PETITIONER:

NARAYANA KUMAR @ NARAYANA PILLAI,
S/O CHELLAPPAN PILLAI, POONURUTHA VEETTIL,
PATHIYOOR KIZHAKKUM MURI, PATHIYOOR VILLAGE,
(VIA) KAYAMKULAM, ALAPPUZHA DISTRICT.

BY ADV. SRI.G.HARIHARAN

RESPONDENT:

RAJESH, S/O KRISHNAKURUP,
LEKSHMI NIVAS, ERUVA EAST MURI,
PATHIYOOR VILLAGE, (VIA)AMBALAPUZHA,
ALAPPUZHA DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 36570 OF 2007

Dated this the 11th day of December, 2007

J U D G M E N T

This writ petition is filed seeking to set aside the order of arrest in EP 175/05 in OS 232/02 and to direct the Sub court, Mavelikkara to afford the petitioner an opportunity to submit his contentions. Learned counsel for the writ petitioner submits before me that, the writ petitioner has been arrested and released on kachit with a direction to appear before the court. His grievance is that he was not permitted to raise his contention regarding the means, before issuance of arrest. A perusal of the proceedings paper would reveal that as he remained absent, the decree holder filed an affidavit and the court being satisfied with the means of the debtor, ordered issuance of arrest. Even though he did not give evidence under Order XXI Rule 37 CPC when he is arrested and produced under Order XXI Rule 40 CPC, it envisages that if he wants an opportunity he must be given an opportunity to put forward his contentions. As the writ petitioner is already released on kachit and when he enters appearance on the next hearing date, he may be permitted to adduce evidence in support of his contentions regarding his ability to pay the amount. Till a final decision is taken in that matter, he may continue to be released on kachit for his appearance before the court.

The writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

vps